**Amended Title II regulations emphasize broader coverage under ADAAA**

In August, the Justice Department issued a [final rule](http://www.specialedconnection.com/LrpSecStoryTool/index.jsp?contentId=10001&chunkid=1000006527) that implements the ADA Amendments Act of 2008 into Title II and Title III regulations.

**Major changes to Title II regulations**

Below, review the major changes to the Title II regulations as a result of the 2016 amendments. These include:

 Understanding that the definition of "disability" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 28 CFR Part 35.108(a)(2)(i).

 Addition of the immune system and the circulatory system as examples of bodily systems that may be affected by a physical impairment.

 Addition of dyslexia and ADHD to the non-exhaustive list of physical or mental impairments.

 Recognition that certain impairments will in "virtually all cases" result in coverage including: deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy/muscular dystrophy and multiple sclerosis, HIV, major depressive disorder, bipolar disorder, PTSD, TBI, OCD, and schizophrenia.

 Addition of examples of major life activities including all the 2010 examples plus: eating, sleeping, standing, sitting, reaching, lifting, bending, learning, reading, concentrating, thinking, writing, communicating, and interacting with others. 28 CFR Part 35.108(c).

 Recognition that "major life activities" includes the operation of major bodily functions.

 Description of mitigating measures including AT, modifications, and learned behavioral or adaptive modifications.

 Recognition that an impairment does not have to prevent or severely restrict the performance of a major life activity to qualify as a disability. 28 CFR Part 35.108(c)(2).

 Explanation that Title II entities only need to provide reasonable modifications to individuals with disabilities or individuals with a record of disability, not to an individual who is only regarded as having a disability.

 Addition of a provision stating that nondisabled individuals do not have the right to sue districts and other public entities for discrimination based on the absence of disabilities. 28 CFR Part 35.130(i). This means that individuals without disabilities can't sue districts for failing to provide them with reasonable modifications that it made available to individuals with disabilities.

**Follow 9 rules on 'substantial limitation'**

"Substantially limits" is not defined in the Title II regulations; however, it includes nine rules of construction. The DOJ explained that those rules "provide ample guidance on determining whether an impairment substantially limits a major life activity." 81 Fed. Reg. 53,229 (2016). Those nine rules are as follows:

1. "Substantially limits" is not intended to be a demanding standard.

2. The threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

3. An impairment does not need to substantially limit more than one major life activity.

4. An impairment that is episodic or in remission qualifies as a disability if it would substantially limit a major life activity when active.

5. An impairment does not need to prevent or significantly or severely restrict an individual from performing a major life activity to be substantially limiting; the question is how the impairment limits the individual's ability to perform the major life activity as compared to most people in the general population.

6. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment.

7. An individual with an impairment generally does not need to produce scientific, medical, or statistical evidence to show how his performance of a major life activity compares to the performance of most people in the general population (however, the individual may present such evidence where appropriate).

8. Public entities may not consider the ameliorative effects of mitigating measures when determining whether an impairment substantially limits a major life activity.

9. The effects of an impairment lasting or expected to last less than six months can be substantially limiting for establishing an actual disability or a record of a disability.